



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: MNDC MNSD

Introduction

The hearing on which the landlord seeks a review hearing was conducted on May 1, 2013 on the tenant's application for return of her security deposit in double, less a \$20 agreed deduction. The tenant's application was made on the grounds that the landlord had neither returned nor made application to claim on the deposit within 15 days as required by section 38(1) of the *Act*. In her decision of May 1, 2013, the Arbitrator found that the landlord must return the deposit in double as compelled by section 38(6) when a landlord has not complied with section 38(1) of the *Act*.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

1. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
2. A party has new and relevant evidence that was not available at the time of the original hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

Issues

In the present matter, the landlord submits that she has new and relevant evidence that was not available at the time of the original hearing.

Facts and Analysis

The tenant submits that she now has evidence from another tenant living in the same rental building that:

- The subject tenant had smoked marijuana on the property;
- The tenant had unauthorized occupants in the rental unit who were subject to police attendance;
- the tenant still owes \$180 in rent for December 2012;
- Smoke and extra wear required the landlord to clean the carpets and have the unit professionally cleaned;
- There were dents in the wall.

Unless it is heard at the same time as an application by the landlord for damage or loss, a hearing conducted on an application by a tenant for return of a security deposit is limited to consideration of whether the landlord returned the deposit, made the required application to claim against it or had the tenant's permission to keep it.

In absence of proof of one of those conditions, section 38(6) of the *Act* compels the arbitrator to order return of the deposit in double.

The evidence submitted with this application may very well establish that the landlord had a cause of action against the tenant but the landlord did not make, and still has not, made, her own application as she must do in order to put forward a claim for loss or damage.

Among the reasons for which the directors delegate may dismiss an application for a review hearing, section 81)(1)(b)(iii) of the *Act* adds when the application, "discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied....."

In brief, while the evidence submitted as new and relevant might support an application from the landlord for damage or loss, it does not constitute relevant evidence on an application for a review hearing.

The fact remains that the landlord did not return the deposit, did not make application and did not have the tenant's consent and the arbitrator was left with no discretion in the matter but to order return of the deposit in double. Therefore, I must dismiss the present application and deny the request for a review hearing.

Decision

The application for a review hearing is dismissed and the decision and order of May 1, 2013 remain in force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 28, 2013

Residential Tenancy Branch